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§ 964.425 Small public housing agencies.

(a) *General.* The requirements of this subpart do not apply to any public housing agency that:

(1) Has less than 300 public housing units (or has no public housing units);

(2) Has provided reasonable notice to the resident advisory board of the opportunity for residents to serve on the governing board;

(3) Has not been notified of the intention of any resident to participate on the governing board within a reasonable time (which shall not be less than 30 days) of the resident advisory board receiving the notice described in paragraph (a)(3) of this section; and

(4) Repeats the requirements of paragraphs (a)(2) and (a)(3) of this section at least once every year.

(b) *Public housing agencies that only administer Section 8 assistance.* A public housing agency that has no public housing units, but administers Section 8 tenant-based assistance, is eligible for the exception described in paragraph (a) of this section, regardless of the number of Section 8 vouchers it administers.

(c) *Failure to meet requirements for exception.* A public housing agency that is otherwise eligible for the exception described in paragraphs (a) and (b) of this section, but does not meet the three conditions described in paragraphs (a)(2) through (a)(4) of this section, must comply with the requirements of this subpart.

§ 964.430 Nondiscrimination.

(a) *Membership status.*—(1) *General.* A resident board member is a full member of the governing board.

(2) *Resident participation must include matters regarding Federal public housing and Section 8 tenant-based assistance.* A resident board member must be allowed to take part in decisions related to the administration, operation, and management of Federal public housing programs and Section 8 tenant-based rental assistance programs. This rule does not extend to matters that:

(i) Exclusively relate to other types of housing assistance (such as State financed housing assistance); or

(ii) Do not involve housing assistance (as may occur where the city or county

governing body also serves as the PHA board).

(3) *Public housing agency may expand scope of resident participation.* A public housing agency may choose to expand the scope of resident member involvement to matters not required under paragraph (a)(2) of this section.

(b) *Residence status.* A governing board may not prohibit any person from serving on the governing board because that person is a resident of a public housing project or is assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(c) *Conflict of interest.* A governing board may not exclude any resident board member from participating in any matter before the governing board on the grounds that the resident board member's lease with the public housing agency, or the resident board member's status as a public housing resident or recipient of Section 8 tenant-based assistance, either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity and applies uniquely to that member and not generally to residents or to a subcategory of residents.

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AUTHORITY: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

SOURCE: 41 FR 20276, May 17, 1976, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

Subpart A—Preemption of State Prevailing Wage Requirements

§ 965.101 Preemption of State prevailing wage requirements.

(a) A prevailing wage rate including basic hourly rate and any fringe benefits) determined under State law shall be inapplicable to a contract or PHA-

performed work item for the development, maintenance, and modernization of a project whenever:

(1) The contract or work item: (i) Is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing and (ii) is assisted with funds for low-income public housing under the U.S. Housing Act of 1937, as amended; and

(2) The wage rate determined under State law to be prevailing with respect to an employee in any trade or position employed in the development, maintenance, and modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) of this section is applicable:

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(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development, maintenance, and modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds: (A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade; (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) of this section to any of its own employees who may be engaged in the work item for development, maintenance, and modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the contract or PHA-performed work item for development, maintenance, and modernization of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2) of this section, nor does this section impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA on or after October 6, 1988, but not to work or contracts administered by Indian Housing Authorities (for which, see part 905 of this chapter).

[53 FR 30217, Aug. 10, 1988, as amended at 57 FR 28358, June 24, 1992; 61 FR 8736, Mar. 5, 1996]

Subpart B—Required Insurance Coverage

SOURCE: 58 FR 51957, Oct. 5, 1993, unless otherwise noted.

§ 965.201 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to implement policies concerning insurance coverage required under the Annual Contributions Contract (ACC) between the U.S. Department of Housing and Urban Development (HUD) and a Public Housing Agency (PHA).

(b) *Applicability.* The provisions of this subpart apply to all housing owned by PHAs, including Turnkey III housing. However, these provisions do not apply to Section 23 and Section 10(c) PHA-leased projects or to Section 8 Housing Assistance Payments Program projects.

§ 965.205 Qualified PHA-owned insurance entity.

(a) *Contractual requirements for insurance coverage.* The Annual Contributions Contract (ACC) between PHAs and the U.S. Department of Housing and Urban Development requires that